IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6914 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RANCHHODJI C CHAUHAN

Versus

DISRICT PANCHAYAT

Appearance:

MR Parth V Divyeshwar for Mr. M.R ANAND for Petitioner

MR MC BAROT for Respondent No. 1, 2

CORAM : MR.JUSTICE C.K.THAKKAR

Date of decision: 03/03/2000

ORAL JUDGEMENT

This petition is filed by the petitioner for an appropriate writ, order or direction quashing and setting aside the order dated September 17, 1973 at Annexure `A' to the petition as also the award ,Annexure `B' dated June 15, 1987 passed by the Presiding Officer of the

Special Labour Court,Ahmedabad.

The case of the petitioner was that he was appointed as work-charge Karkun by the District Panchayat, Banaskantha, respondent No.1 and was working since February 5, 1973. Vide an order dated September 17,1973, his services were terminated without issuing any notice, calling for his explanation and observing principles of natural justice.

Being aggrieved by the order, he approached the Labour Court and the Labour court, by the impugned order did not grant relief though it held that the petitioner was serving with the respondent-Panchayat and that his services were terminated. The Labour court, however, observed that in case respondent No.1 will make new recruitment, an opportunity will be afforded to the petitioner and the petitioner will be provided employment.

Rule was issued in the petition and today, the matter is taken up for final hearing.

Mr.Parth Y. Divyeshwar for Mr. M.R.Anand for the petitioner raised several contentions. He submitted that the order of termination of services was passed without issuing notice to the petitioner , without calling for his explanation and observing principles of natural justice. It is,therefore, illegal, arbitrary and unreasonable. It was also submitted that though the petitioner was similarly situated with other employees, persons junior to him were retained in service whereas, services of the petitioner were terminated. Accordingly, action was violative of Articles 14 and 16 of the Constitution. He further submitted that in the facts and circumstances of the case, the Labour Court was not right in not granting benefits and not passing award in favour of the petitioner.

Mr. M.C.Barot, on the other hand,supported the order passed by the authorities as also the award of the Labour Court. He submitted that appointment of the petitioner was not regular and persons against whom grievance is made, were not similarly situated. The impugned action is clearly within four corners of law and does not require interference.

In the facts and circumstances of the case, in my opinion, it cannot be said that by terminating services of the petitioner, any illegality can be said to have been committed by the first respondent. Looking to the

order of appointment passed in favour of the petitioner on February 2, 1973, it is clear that the petitioner was appointed on temporary basis on Drought Prone Area Project (`DPAP' for short) Sub-Division, Deodar, District Banaskantha.

Affidavit-in-reply is also filed by the Executive Engineer, Banaskantha District Panchayat, B & C Divisions I and II, respondent No.2 , wherein it was stated that the petitioner was appointed only for DPAP programme. On completion of the programme, services of the petitioner were terminated vide order dated September 17, 1973 and the said action was neither illegal nor contrary to law. It was purely for a temporary period, for a particular project and as soon as the project was over, the petitioner had no right to continue work.

In the counter, it was also clarified that Pothat Ramanlal Girdharlal and K.I.Joshi who were continued were not similarly situated to the petitioner inasmuch as both of them were appointed in totally different division for regular work. Regarding Mr. Joshi, though the petitioner has stated that he was similarly situated , no material has been placed on record. Regarding Mr. Pothat, however, order is placed on record at Annexure `F' to the petition from which it becomes clear that his name was registered before the Employment Exchange . For making appointments, certain names were called from the Employment Exchange; interviews were taken, certain candidates were selected and in accordance with the said selection procedure, Pothat Ramanlal Girdharlal was appointed on DPAP work , Dhanera.

It is also important to note that the petitioner has approached Gujarat Civil Services Tribunal by filing Appeal No. 146 of 1977. In the said appeal also , he had raised the contention regarding Articles 14 and 16 of the Constitution by making reference to cases of R.G.Pothat and K.I.Joshi. The Tribunal observed that R.G.Pothat was appointed at Dhanera DPAP division in 1973 but prior thereto, he was appointed on September 1, 1971 which was clear from his service book.Mr. Joshi was appointed after calling name from Employment Exchange In these circumstances, the Tribunal held that it cannot be said that the case of the petitioner was similar to that of R.G.Pothat or K.I.Joshi and accordingly, his appeal was dismissed. In my opinion, Mr. Barot is right in contending that when the Tribunal dismissed the appeal filed by the petitioner on September 16, 1978 and against the said decision, no petition was filed,it has become final. Obviously, in such circumstances, that decision

is binding to the petitioner. The petitioner, in the year 1987, by filing the present appeal cannot challenge the action approved by the competent tribunal against him in the year 1978.

Moreover, the Labour Court has protected the petitioner by observing that though the petitioner had not completed one year or 240 days inasmuch as he was appointed on February 5, 1973 and his services were terminated on September 17, 1973 and thus, provisions of Section 25-F cannot be invoked, Section 25F will have to be taken into consideration by the first respondent and as and when an occasion will arise for fresh appointment, respondent No.1 will give an opportunity to the petitioner. By observing so, the Tribunal has acted in accordance with provisions of the Industrial Disputes Act, 1947.

My attention was also invited by the learned counsel for the petitioner to the following decisions:

(1) Basudeo Tiwary vs. Sido Kanhy University,
1998 (8) SCC 194;
(2) Union of India vs. K.G.Radhakrishna Panickar
1998 (5) SCC 111;
(3) H. D. Singh vs. Reserve Bank of India
AIR 1986 SC 132.

In my opinion, so far as principle laid down by the Supreme Court in the aforesaid cases is concerned, there cannot be any dispute. In the facts and circumstances, however, the ratio laid down therein would not apply and hence they cannot help the case of the petitioner.

For the foregoing reasons, I see no reason to interfere with the award passed by the Labour Court. Petition deserves to be dismissed and is accordingly dismissed. Rule discharged. Interim relief vacated. No order as to costs.

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parekh